

SUBJECT: Significant Questions Relating to House Select Committee's Unilateral Declassification of Documents

I. Issues That Could Arise In The Courts

1. What would be the result of litigation if the House attempts to enforce its subpoena against the Agency?
 - a. Assume Agency takes an absolute privilege position.
 - b. Assume Agency takes a qualified privilege position.
2. What would be the result of litigation if the Agency attempts to obtain the return of document's currently in the House Select Committee's possession?

II. Issues That Could Arise In The Congress

1. What type of legislation could the Congress enact providing for unilateral declassification or limiting the basis or procedures for initial classification?
2. Would it be Constitutional?
 - a. See veto message re 1974 Freedom of Information Act Amendment

3. What other Congressional action could be taken, such as appropriations restrictions?

III. Issues That Could Arise Within The Executive Branch

1. Can the Executive Branch refuse any further cooperation with the House Select Committee under present circumstances?
 - a. Would this be an appropriate exercise of Executive Privilege?

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2d Session

HOUSE OF REPRESENTATIVES

REPT. 93-916
PART II

COMMITTEE REFORM AMENDMENTS OF 1974

REPORT

OF THE

SELECT COMMITTEE ON COMMITTEES

U.S. HOUSE OF REPRESENTATIVES

TO ACCOMPANY

H. Res. 988

Together With

SUPPLEMENTAL VIEWS



MARCH 21, 1974.—Referred to the House Calendar
and ordered to be printed

both branches, but where changed circumstances of public policy require some extraordinary move to declassify, possibly over the objections of one branch.

A Proposal To Meet Problems of National Security Information

The select committee discussed whether to mandate new rules and their application in the reported House resolution, or whether merely to include a study of the problem in the appendix to this report. Its decision has been to take a middle ground. Because actual changes in the rules will require more study and debate than the present occasion makes available, and because the matter is simply too important to relegate to an appendix, the select committee includes these recommendations on access to and handling of classified information in the report itself.

The select committee strongly suggests that the House must take the initiative to create an orderly set of rules which govern the receipt, use, storage, and dissemination of national security information and intelligence. These rules should be designed in such a way as to give the same quality of protection as is afforded by the executive branch, but not to tie the hands of the House when overriding considerations of national policy require a change from the restrictions imposed on such information by its originators in the executive branch of Government. These exceptions will require the most careful consideration if the House is to receive sensitive information. As further thought will reveal, the issues are complex, and no abstract set of rules may cover every possible contingency in an unknown future.

To facilitate action by the House, the select committee recommends study of the draft language which follows this paragraph. Members of the select committee did not vote to approve this language as a concrete recommendation for enactment, or it would have been a part of the reported resolution. But it did reach a consensus that the language presented here would be a useful step in translating discussion from generalities to a number of specific issues, and hence it is offered to the House for serious consideration.

In clause 3 of Rule X, add the following new paragraph:

"(1) The Committee on Armed Services [and] the Committee on Appropriations [and] the Committee on Foreign Affairs shall each have a subcommittee on intelligence consisting of members appointed (without regard to seniority) by the Speaker with the concurrence of the chairman of the committee. Such subcommittees may meet separately on matters within the jurisdiction of their respective committees, or jointly on matters which are of common concern or affect the House generally.

"(2) The two [three] subcommittees meeting jointly shall constitute the special committee on intelligence, and as such shall have responsibility for (A) preparing and maintaining a manual to govern the protection of classified national security information, including

the provision of secure staff personal clearance procedures and individual Members, (B) be required to implement the with executive branch agencies of employees needing branch agencies for field work providing for the effective and procedures relating to the House under clause 5.

Insert in Rule X the following succeeding clause according

"Handling"

"5. (a) All information received by any committee or Member or higher as a national security deemed to have been received subject to all of the rules and the disclosure of activities of the session. No such information person other than a Member have been properly cleared information or data in the past

"(b) Any Member or employee or data shall be notified of its disclosure. If in the judgment or data there is special sensitivity the information otherwise than participation) the Member acknowledge that he or she restrictions on disclosure.

"(c) Each Member or employee classified national security in a security manual governing copies of applicable statutes penalties for unauthorized disclosure clearance standards and provide the same standards of protection branch) shall be prepared and concurred in by the Speaker

"(d) House employees (with staffs of Members), before the national security information of investigation and certification sensitivity involved, follow in branch.

the provision of secure storage and the establishment of appropriate personal clearance procedures for staff employees of both committees and individual Members, (B) maintaining such central records as may be required to implement this paragraph, (C) maintaining such liaison with executive branch agencies as will expedite the orderly investigation of employees needing clearance, and contracting with executive branch agencies for field work and searches of files, and (D) otherwise providing for the effective conduct and administration of activities and procedures relating to the handling of classified information in the House under clause 5.

Insert in Rule X the following new clause (and renumber the succeeding clause accordingly):

"Handling of Classified Information

"5. (a) All information and data whether written or oral received by any committee or Member of the House which is classified Secret or higher as a national security matter by the originator shall be deemed to have been received in executive session, and shall be subject to all of the rules and procedures of the House which restrict the disclosure of activities conducted and matters presented in executive session. No such information or data shall be disclosed to any person other than a Member, except to those House employees who have been properly cleared and can demonstrate a need to have such information or data in the performance of their official duties as such.

(b) Any Member or employee receiving such classified information or data shall be notified of its classification and the restrictions on its disclosure. If in the judgment of the person providing the information or data there is special sensitivity (or in the case of a Member receiving the information otherwise than in the normal course of his committee participation) the Member or employee may be required to sign an acknowledgement that he or she understands and will abide by the restrictions on disclosure.

(c) Each Member or employee who receives or may receive classified national security information or data shall be provided with a security manual governing its use and protection, together with copies of applicable statutes on the protection of official secrets and penalties for unauthorized disclosure thereof. Such manual and the clearance standards and procedures for the House (which shall meet the same standards of protection as those applied in the executive branch) shall be prepared by the special committee on intelligence and concurred in by the Speaker and the minority leader.

(d) House employees (whether on committee staffs or on personal staffs of Members), before they may receive or be exposed to classified national security information or data, must be cleared by a process of investigation and certification which is appropriate to the level of sensitivity involved, following the criteria which apply in the executive branch.

"(e)(1) When a Member receives classified national security information or data otherwise than in the course of his or her committee activities, and believes it is over- or under-classified, he or she may request of the special committee on intelligence that such information or data (in the House) be declassified, or reclassified at another level, as appropriate.

"(2) When a Member receives classified national security information or data in the course of his or her committee activities, and believes it is over- or under-classified, he or she may request consideration of a change in classification by the committee. If the committee by majority vote agrees to the change, it may request such change of the special committee on intelligence.

"(3) The special committee on intelligence, if it agrees with any change requested under subparagraph (1) or (2), shall report its agreement with such change to the Speaker and the minority leader, and if they concur, the change shall automatically be made. If the decision of the special committee or of the leadership is adverse to such change, an appeal may be taken to the floor, in closed door session, at the direction of a majority of any committee.

"(4) Prior to any action by a Member or committee or the special committee on intelligence with respect to the reclassification of any information or data under this subparagraph, such reclassification shall be requested of the originator of the information or data, with a response requested within a period of seven legislative days. Such action shall not be taken prior to the conclusion of such period except in case of an emergency requiring immediate consideration by the House.

TECHNICAL DE
RESOLUTION

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